IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4142 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE MANDANKUNDLA SEVA SAHAKARI MANDALI LTD & 15 - Petitioner(s)
Versus
DISTRICT REGISTRAR & 5 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1 - 16.
None for Respondent(s) : 1,4 - 6.
MR BS PATEL for Respondent(s) : 2 - 3.
MRS RANJAN B PATEL for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 07/03/2006

ORAL JUDGMENT

1.Leave to delete respondent No.6, as the presence of respondent No.6 is not required and

he will act only as an election officer.

2.Rule. Learned A.G.P. who is directed to appear by the Court for the respondent No.1 and Mr.B.S. Patel appearing for Mrs. Ranjan B.Patel for the respondent Nos.2 to 5, waives service of notice of Rule.

3.With the consent of the learned advocates appearing for both sides, the matter is taken up for final hearing today.

4.The present petition is preferred by the petitioners against the order passed by the learned Nominee dated 13.12.2005 below application for temporary injunction in Lavad Suit No.249 of 2005 and its confirmation thereof by the Gujarat State Co-operative Tribunal in Revision Application No.334 of 2005 whereby, the interim injunction is granted against the petitioners from functioning and with a view to see that the vacuum is not

created, the District Registrar is directed to appoint custodian and it is further directed to hold the election of the members of the Managing Committee within a period of two months.

5.I have heard Mr. Pahwa, learned counsel appearing for the petitioner, learned A.G.P. as well as Mr. B.S. Patel appearing for the respondent Nos.2 to 5 herein. After the matter was heard, it appears that there was deliberation amongst the learned advocates appearing for both sides and both sides are in agreement on the following aspects:-

A. The election of the members of the Managing Committee shall be held by the custodian, appointed by the District Registrar and Secretary of the petitioner No.1-Society and the same shall be completed within a period of four weeks from today and

the process shall be begun immediately within one week from the date of receipt of the order.

B. Until the election is completed as indicated hereinabove, the custodian appointed by the District Registrar as well as the petitioner No.6-Govindbhai Rajabhai Sakhiya who is claiming as the President of the Society, shall jointly lookafter the affairs of the society for running day to day transaction, however, no policy decision shall be taken until the election is held and the newly elected body assumes the office.

C. After the election is completed, newly elected body shall be allowed to assume the office by custodian appointed by the District Registrar as well as all the petitioners.

D.After the newly elected body assumes the

office, the respondent Nos. 2 to 5 shall make appropriate declaration in the proceedings of Lavad Suit No.249 of 2005 for not pursuing the proceedings of the Suit and the prayer shall be made to the learned Nominee to dispose of the Suit accordingly. Similarly, after the newly elected body assumes the office, the petitioners shall also make appropriate declaration in the proceedings of appeal/revision before the Additional Registrar (Appeals) which is preferred by the petitioners against the order of appointment of the custodian and the appropriate prayer shall be made for not pursuing the proceedings and disposal of the proceedings of the appeal accordingly.

6.It appears that the learned nominee has found while considering the application for temporary injunction that the process of election is not

genuinely conducted and, therefore, when factum of holding the election is not believed by the learned Nominee, interim injunction is given for prohibiting the so called elected representative and also for appointment of custodian for the interim injunction period. The said order of the learned Nominee is not upset by the Tribunal. In the opinion of this Court, as even otherwise the petitioners were declared as uncontested and as no election was held with a view to avoid further complication, if the election is held at the earliest, the will of the electorate would be reflected and those who are elected at that election, can lawfully assume the office and there may not be any further dispute at least on the aspect of genuineness of holding of the election. Therefore, it appears that if the order of the learned Nominee as well as of the learned Tribunal is modified in view of the aforesaid agreement between both the sides by

substituting the order, the same would meet with the ends of justice.

7.Therefore, the direction in terms of para A to D of para-5 are issued by modifying the order of the Nominee and the Tribunal. The petition is disposed of in terms of aforesaid direction. Rule is partly made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs. Direct service to the petitioners. It will also open to the respondent Nos.2 to 5 to produce the order before the custodian in case, if it is not produced by the petitioners.

(JAYANT PATEL,J.)

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